

WILD ANIMALS IN TRAVELLING CIRCUSES (SCOTLAND) ACT 2018

EXPLANATORY NOTES

THE ACT

Schedule 1: Enforcement powers

20. [Schedule 1](#), as introduced by section 7, deals with enforcement of the Act's provisions. It confers powers on inspectors appointed under the Act, and on police constables, to take enforcement action under the Act. It sets out the range and extent of those enforcement powers and creates offences in relation to hampering enforcement. It also provides for the circumstances when an inspector or constable is authorised to exercise their powers (such as powers of entry and inspection) with or without a warrant.

Interpretation

21. [Paragraph 1](#) provides definitions of the persons who are given powers to enforce the Act. These are an inspector appointed by the Scottish Ministers or a local authority, and a constable (as defined in the Police and Fire Reform (Scotland) Act 2012, section 99(1)). Paragraph 1 also defines "premises" to include land and any other place, including a vehicle or vessel, tent or other moveable structure. Hence "premises" would include the vehicles and other moveable structures (for example caravans and mobile homes) commonly associated with a travelling circus.

Entry and associated powers

22. [Paragraph 2](#) allows an inspector to enter any premises (other than domestic premises) if there are reasonable grounds for believing that an offence has been or is being committed at the premises. However, this power may be exercised only for the purpose of ascertaining whether or not an offence under section 1 of the Act has been or is being committed at the premises.
23. [Paragraph 3](#) confers power on a sheriff or justice of the peace to grant a warrant, stating the conditions which must be satisfied first. By virtue of section 45 of the Courts Reform (Scotland) Act 2014, the power to grant a warrant under paragraph 3 extends to a summary sheriff as well. There must be reasonable grounds to believe that an offence under section 1 is being or has been committed at particular premises, or that evidence relating to the commission of such an offence will be found at premises. In addition, a warrant will not be granted unless the sheriff or justice is satisfied that an inspector or constable has been refused permission to enter the premises (or that such permission is expected to be refused). Alternatively a warrant may also be granted if the sheriff or justice is satisfied that the premises are unoccupied or the owner is temporarily away from the premises. (Where a summary sheriff is considering an application for a warrant under paragraph 3, the conditions described above relating to the granting of the warrant apply to the summary sheriff in the same ways as they do for the sheriff or a justice of the peace).

24. [Paragraph 4](#) makes provision for what a warrant authorises an inspector or a constable to do - namely, to enter the premises to which the warrant relates, to search for or examine any animal and to search for, examine and seize any equipment, document or other thing tending to provide evidence of the commission of, or participation in, an offence under section 1 of the Act. These powers under warrant are exercisable in respect of any premises, including domestic premises (as defined in paragraph 1).
25. [Paragraph 5](#) enables an inspector or constable, in certain circumstances, to exercise the same powers as are mentioned in paragraph 4, but without the need for a warrant. While the powers in paragraph 4 are exercisable only in relation to premises specified in a warrant, the powers in paragraph 5 may be exercised in respect of any premises (so long as they are not domestic premises). The condition that must be satisfied before the powers under paragraph 5 may be exercised is that the inspector or constable must believe that delay would frustrate the purpose for which the power is to be exercised. For example, if an inspector suspects that a wild animal is being exhibited to the public, he or she may, without a warrant, enter circus premises to search for the animal and look for and seize any evidence of the offence if it is known that the circus is moving to its next destination the following day.

Stopping and detaining vehicles

26. [Paragraph 6](#) sets out the power the Act affords a constable in uniform, or an inspector accompanied by a constable in uniform, to stop and detain a vehicle or vessel. Such a power, however, may be exercised only for the purpose of exercising any of the other powers conferred by schedule 1, or conferred under a warrant granted under the schedule. Paragraph 6(5) provides a definition of “vehicle” that specifically includes a caravan. The power to stop and detain vehicles would therefore apply to the types of vehicles, e.g. caravans and mobile homes, which are commonly associated with a travelling circus. A vehicle or vessel may be detained for so long as is reasonably required to enable the constable or inspector to exercise the power in relation to which the vehicle or vessel was stopped. That power need not be exercised at the precise spot where the vehicle or vessel was detained, but somewhere nearby (for example, if that is safer or more convenient).

Entry and associated powers: supplementary

27. [Paragraphs 7 to 13](#) set out a number of matters supplementary to the powers discussed above (including the power to issue warrants). Some of these are self-explanatory. Under paragraph 9, an inspector or constable may use reasonable force when exercising a power conferred on them by the schedule or under a warrant. But that does not apply to the power of entry under paragraph 2.
28. [Paragraph 11\(1\)](#) permits an inspector or constable to take additional people (for example, a vet) onto any premises they may enter to provide assistance to the inspector or constable in exercising a power under the schedule. Inspectors or constables may also take any equipment which might be required when entering premises. Paragraph 11(2) provides that the powers conferred on inspectors and constables under the schedule, or in a warrant granted under the schedule, carry with them certain additional powers. These include testing and taking samples from animals, and identifying animals by any means, such as marking or micro-chipping them. Therefore, additional people may accompany inspectors or constables exercising any enforcement powers under the schedule, such as powers of entry, inspection, search or detention under paragraphs 2, 4, 5 and 6. For example, an inspector or constable can exercise powers under paragraphs 4 and 5 to search for and examine any animal and also has additional powers under paragraph 11(2) such as performing tests. But it may be necessary for the inspector or constable to take a vet with them when entering and searching the premises so that the vet can use his or her professional skills to examine or perform tests on any animals which are found to assist the inspector or constable.

*These notes relate to the Wild Animals in Travelling Circuses (Scotland)
Act 2018 (asp 3) which received Royal Assent on 24 January 2018*

29. **Paragraph 12** requires certain persons to comply with any reasonable direction made by an inspector or constable and to provide any information and assistance that is reasonably required. Where a power under the schedule or under a warrant is being exercised in respect of particular premises, those persons are the occupier of the premises, the circus operator (where the premises are circus premises) or any other person who seems to be under the control of those persons. A failure to comply with obligations under this paragraph is a criminal offence, as explained below.

Offences

30. Breach of the duties set out in paragraph 12(1), without a reasonable excuse, is an offence (paragraph 14(1)). It is also an offence to intentionally obstruct an inspector or constable who is exercising a power under the schedule or under a warrant granted under the schedule (paragraph 14(2)). Both these offences can be prosecuted in summary courts and carry a maximum fine of level 5 on the standard scale (£5,000).